



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

[Docket No. OSHA- 2015-0003]

RIN 1218-AC97

Maine State Plan for State and Local Government Employers

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of initial approval determination.

SUMMARY: The Maine State and Local Government Only State Plan, a state occupational safety and health plan applicable only to public sector employment (employees of the state and its political subdivisions), is approved as a developmental plan under the Occupational Safety and Health Act of 1970 and OSHA regulations. Under the approved Plan, the Maine Department of Labor is designated as the state agency responsible for the development and enforcement of occupational safety and health standards applicable to state and local government employment throughout the state. The Occupational Safety and Health Administration (OSHA) retains full authority for coverage of private sector employees in the State of Maine, as well as for coverage of federal government employees.

DATES: Effective: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Francis Meilinger, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999; email meilinger.francis2@dol.gov.

For general and technical information: Contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N-3700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2200; email: kalinowski.doug@dol.gov.

SUPPLEMENTARY INFORMATION:

A. Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "OSH Act"), 29 U.S.C. 667, provides that a state which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to which a federal standard has been promulgated may submit a State Plan to the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") documenting the proposed program in detail. Regulations promulgated pursuant to the OSH Act at 29 CFR Part 1956 provide that a state may submit a State Plan for the development and enforcement of occupational safety and health standards applicable only to employers of the state and its political subdivisions ("public employers").

Under these regulations the Assistant Secretary will approve a State Plan for State and Local Government Only if the Plan provides for the development and enforcement of standards relating to hazards in employment covered by the Plan, which are or will be at least as effective in providing safe and healthful employment and places of employment as standards promulgated and enforced under Section 6 of the OSH Act, giving due consideration to differences between public and private sector employment. In making this determination the Assistant Secretary will

consider, among other things, the criteria and indices of effectiveness set forth in 29 CFR Part 1956, Subpart B.

A State and Local Government Only State Plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1956.10 and 1956.11, if it includes satisfactory assurances by the state that the state will take the necessary steps, and establishes an acceptable developmental schedule, to meet the criteria within a three year period (29 CFR 1956.2(b)). The Assistant Secretary may publish a notice of “certification of completion of developmental steps” when all of a state’s developmental commitments have been met satisfactorily (29 CFR 1956.23; 1902.33 and 1902.34) and the Plan is structurally complete. After certification of a State Plan for State and Local Government Only, OSHA may initiate a period of at least one year of intensive performance monitoring, after which OSHA may make a determination under the procedures of 29 CFR 1902.38, 1902.39, 1902.40 and 1902.41 as to whether, on the basis of actual operations, the criteria set forth in 29 CFR 1956.10 and 1956.11 for “at least as effective” State Plan performance are being applied under the Plan.

B. History of the Present Proceeding

Since 1971, the Maine Department of Labor, Bureau of Labor Standards (Bureau), has adopted standards and performed inspections in the public sector (state, county, and municipal employers) as outlined under the provisions of the state's existing enabling legislation: Maine Revised Statutes, Title 26: Labor and Industry. Maine began working on a State and Local Government Only State Plan in 2012 and submitted a draft Plan to OSHA in February of 2013. OSHA reviewed the draft Plan and its findings were detailed in various memoranda and other documents. OSHA determined that the Maine statutes, as structured, and the proposed State Plan needed changes in order to meet the State and Local Government Only State Plan approval criteria in 29 CFR 1956. Maine formally submitted a revised Plan applicable only to public

employers for federal approval on May 2, 2013. Over the next several months, OSHA worked with Maine in identifying areas of the proposed Plan which needed to be addressed or required clarification. In response to federal review of the proposed State Plan, supplemental assurances, and revisions, corrections and additions to the Plan were submitted on September 4, 2013 and November 7, 2014. Further modifications were submitted by the state on December 19, 2014. Amendments to Title 26 of the Maine Revised Statutes were proposed and enacted by the Maine Legislature and signed into law by the Governor in 2014. The amended legislation provides the basis for establishing a comprehensive occupational safety and health program applicable to the public employers in the state. The revised Plan has been found to be conceptually approvable as a developmental State Plan.

The OSH Act provides for funding of up to 50% of the State Plan costs, but longstanding language in OSHA's appropriation legislation further provides that OSHA must fund "... no less than 50% of the costs ... required to be incurred" by an approved State Plan. Such federal funds to support the State Plan must be available prior to State Plan approval. The Fiscal Year 2015 Omnibus Appropriations Act includes \$400,000 in additional OSHA State Plan grant funds to allow for Department of Labor approval of a Maine State Plan.

On May 20, 2015, OSHA published a notice in the Federal Register (80 FR 28890) concerning the submission of the Maine State and Local Government Only State Plan, announcing that initial federal approval of the Plan was at issue, and offering interested parties an opportunity to review the Plan and submit data, views, arguments or requests for a hearing concerning the Plan.

To assist and encourage public participation in the initial approval process, the documents constituting the Maine State and Local Government Only State Plan were and remain available at <http://regulations.gov> as Docket No. OSHA-2015-0003. A copy of the Maine State

Plan was also maintained and is available for inspection in the OSHA Docket Office, U.S.

Department of Labor, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210.

This document, as well as news releases and other relevant information, is available at OSHA's

Web page at: <http://www.osha.gov>.

C. Summary and Evaluation of Comments Received

No comments were received.

D. Review Findings

As required by 29 CFR 1956.2 in considering the grant of initial approval to a State and Local Government Only State Plan, OSHA must determine whether the State Plan meets or will meet the criteria in 29 CFR 1956.10 and the indices of effectiveness in 29 CFR 1956.11.

Findings and conclusions in each of the major State Plan areas addressed by 29 CFR 1956 are as follows:

(1) Designated Agency

Section 18(c)(1) of the OSH Act provides that a state occupational safety and health program must designate a state agency or agencies responsible for administering the Plan throughout the state (29 CFR 1956.10(b)(1)). The Plan must describe the authority and responsibilities of the designated agency and provide assurance that other responsibilities of the agency will not detract from its responsibilities under the Plan (29 CFR 1956.10(b)(2)). The Maine Department of Labor is designated by Title 26 of the Maine Revised Statutes as the sole agency responsible for administering and enforcing the State and Local Government Only State Plan in Maine. The Maine Department of Labor, Bureau of Labor Standards is designated as the

sub-agency responsible for the State and Local Government Only State Plan. The Plan describes the authority of the Maine Department of Labor and its other responsibilities.

(2) Scope

Section 18(c)(6) of the OSH Act provides that the state, to the extent permitted by its law, shall under its Plan establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of the state and its political subdivisions. Only where a state is constitutionally precluded from regulating occupational safety and health conditions in certain political subdivisions may the state exclude such political subdivision employees from further coverage (29 CFR 1956.2(c)(1)). Further, the state may not exclude any occupational, industrial or hazard groupings from coverage under its Plan unless OSHA finds that the state has shown there is no necessity for such coverage (29 CFR 1956.2(c)(2)).

The scope of the Maine State Plan includes any employee of the state, including, but not limited to members of the Maine State Legislature, members of the various state commissions, persons employed by public universities and colleges, and employees of counties, cities, townships, school districts, and municipal corporations. Volunteers under the direction of a public employer or other public corporation or political subdivision will also be covered. No employees of any political subdivision are excluded from the Plan. However, the definition of public employee does not extend to students or incarcerated or committed individuals in public institutions. The Maine Department of Labor will adopt all federal OSHA occupational safety and health standards, and the Plan excludes no occupational, industrial or hazard grouping.

Consequently, OSHA finds that the Maine State Plan contains satisfactory assurances that no employees of the state and its political subdivisions are excluded from coverage, and the plan excludes no occupational, industrial or hazard grouping (Maine State Plan pp. 1-2).

(3) Standards

Section 18(c)(2) of the OSH Act requires State Plans to provide occupational safety and health standards which are at least as effective as federal OSHA standards. A State Plan for State and Local Government Only must therefore provide for the development or adoption of such standards and must contain assurances that the state will continue to develop or adopt such standards (29 CFR 1956.10(c); 1956.11(b)(2)(ii)). A state may establish the same standards as federal OSHA (29 CFR 1956.11(a)(1)), or alternative standards that are at least as effective as those of federal OSHA (29 CFR 1956.11(a)(2)). Where a state's standards are not identical to federal OSHA's, they must meet the following criteria: they must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1956.11(b)(2)(iii)); they must, where dealing with toxic materials or harmful physical agents, assure employees protection throughout his or her working life (29 CFR 1956.11(b)(2)(i)); they must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1956.11(b)(2)(vii)); and, they must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1956.11(b)(2)(vii)).

In addition, the State Plan must provide for prompt and effective standards setting actions for protection of employees against new and unforeseen hazards, by such means as authority to promulgate emergency temporary standards (29 CFR 1956.11(b)(2)(v)).

Under the Plan's legislation, Title 26 of the Maine Revised Statutes, the Maine Department of Labor has full authority to adopt standards and regulations (through the Board of Occupational Safety and Health) and enforce and administer all laws and rules protecting the safety and health of employees of the state and its political subdivisions. The procedures for state adoption of federal occupational safety and health standards include giving public notice, opportunity for public comment, and opportunity for a public hearing, in accordance with the

Maine Administrative Procedures Act (Title 5, chapter 375 of the Maine Revised Statutes).

Maine has adopted state standards identical to federal occupational safety and health standards as promulgated through March 26, 2012 (General Industry) and November 8, 2010 (Construction).

The State Plan includes a commitment to update all standards by November 2016. The Plan also provides that future OSHA standards and revisions will be adopted by the state within six months of federal promulgation in accordance with the requirements at 29 CFR 1953.5.

Under the Plan, the Maine Department of Labor (through the Board of Occupational Safety and Health) has the authority to adopt alternative or different occupational health and safety standards where no federal standards are applicable to the conditions or circumstances or where standards that are more stringent than the federal are deemed advisable. Such standards will be adopted in accordance with Title 26 of the Maine Revised Statutes and the Maine Administrative Procedures Act, which includes provisions allowing submissions from interested persons and the opportunity for interested persons to participate in any hearing for the development, modification or establishment of standards (Maine State Plan p. 4).

The Maine State Plan also provides for the adoption of federal emergency temporary standards within 30 days of federal promulgation (Maine State Plan p. 4).

Based on the preceding Plan provisions, assurances, and commitments, OSHA finds the Maine State Plan to have met the statutory and regulatory requirements for initial plan approval with respect to occupational safety and health standards.

(4) Variances

A State Plan must provide authority for the granting of variances from state standards upon application of a public employer or employers which corresponds to variances authorized under the OSH Act, and for consideration of the views of interested parties, by such means as giving affected employees notice of each application and an opportunity to request and

participate in hearings or other appropriate proceedings relating to application for variances (29 CFR 1956.11(b)(2)(iv)).

Title 26, Chapter 6, Section 571 of the Maine Revised Statutes includes provisions for the granting of permanent and temporary variances from state standards to public employers in terms substantially similar to the variance provisions contained in the federal OSH Act. The state provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. A variance may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance.

The state has provided assurances in its developmental schedule that by May 2016, it will adopt regulations equivalent to 29 CFR 1905, OSHA's variance regulations, or provide a citation to currently existing equivalent regulations (Maine State Plan pp. 5 and 13).

(5) Enforcement

Section 18(c)(2) of the OSH Act and 29 CFR 1956.10(d)(1) require a State Plan to include provisions for enforcement of state standards which are or will be at least as effective in providing safe and healthful employment and places of employment as the federal program, and to assure that the state's enforcement program for public employees will continue to be at least as effective as the federal program in the private sector.

- a. Legal Authority. The state must require public employer and employee compliance with all applicable standards, rules and orders (29 CFR 1956.10(d)(2)) and must have the legal authority for standards enforcement (Section 18(c)(4) of the OSH Act), including compulsory process (29 CFR 1956.11(c)(2)(viii)). Title 26, Chapters 3 and 6 of the Maine Revised Statutes establishes the duty of public employers to provide a place of employment free of recognized hazards, to comply with the Maine Department of Labor's

occupational safety and health standards, to inform employees of their protections and obligations and provide information on hazards in the workplace. Public employees must comply with all standards and regulations applicable to their own actions and conduct.

- b. Inspections. A State Plan must provide for the inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1956.11(c)(2)(i)).

When no compliance action results from an inspection of a violation alleged by an employee complaint, the State must notify the complainant of its decision not to take compliance action by such means as written notification and opportunity for informal review (29 CFR 1956.11(c)(2)(iii)).

Title 26, Chapter 3, Sections 44 and 50 of the Maine Revised Statutes provides for inspections of covered workplaces, including inspections in response to employee complaints, by the Director of the Bureau of Labor Standards. If a determination is made that an employee complaint does not warrant an inspection, the complainant will be notified in writing of such determination. The complainant will be notified of the results of any inspection in writing and provided a copy of any citation that is issued. Employee complainants may request that their names not be revealed (Maine State Plan pp. 5-7).

- c. Employee Notice and Participation in Inspection. In conducting inspections, the State Plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1956.11(c)(2)(iii)).

Title 26, Chapter 3, Section 44a of the Maine Revised Statutes provides the opportunity for employer and employee representatives to accompany a Bureau of Labor Standards inspector for the purpose of aiding the inspection. Where there is no authorized employee representative, the inspectors are required to consult with a reasonable number of employees concerning matter of safety and health in the workplace (Maine State Plan p. 6).

In addition, the State Plan must provide that employees be informed of their protections and obligations under the OSH Act by such means as the posting of notices (29 CFR 1958.11(c)(2)(iv)); and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1956.11(c)(2)(vi)).

Through Title 26, Chapter 4, Sections 44 and 45 of the Maine Revised Statutes, the Plan provides for notification to employees of their protections and obligations under the Plan by such means as a state poster, required posting of notices of violation, etc. (Maine State Plan p.8).

Section 44 also authorizes the Director of Labor to issue rules requiring employers to maintain accurate records relating to occupational safety and health. Information on employee exposure to regulated agents, access to medical and exposure records, and provision and use of suitable protective equipment is provided through state standards which will be updated by November 2016 (Maine State Plan p. 3).

- d. Nondiscrimination. A state is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the

state's program, including provision for employer sanctions and employee confidentiality (29 CFR 1956.11(c)(2)(v)).

Title 26, Chapter 6, Section 570 of the Maine Revised Statutes outlines the provisions that an employer cannot discharge or in any manner discriminate against an employee filing a complaint, testifying, or otherwise acting to exercise rights granted by the Maine Revised Statutes.

The Plan provides that an employee who believes that he or she has been discharged or otherwise discriminated against in violation of this section may, within 30 days after the alleged violation occurs, file a complaint with the Director of the Bureau, alleging discrimination. If, upon investigation, the Director determines that the provisions of this chapter have been violated, the Director shall bring an action in Superior Court for all appropriate relief, including rehiring or reinstatement of the employee to his or her former position with back pay. Within 90 days of the receipt of a complaint filed under this section, the Director shall notify the complainant of his or her determination (Maine State Plan p. 7).

The state has provided assurances in its developmental schedule that by May 2016, it will adopt regulations equivalent to 29 CFR 1977, OSHA's whistleblower regulations, or provide a citation to currently existing equivalent regulations (Maine State Plan p. 13).

- e. Restraint of Imminent Danger. A State Plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1956.11(c)(2)(vii)).

Title 26, Chapter 3, Section 49 of the Maine Revised Statutes provides that the Director may petition the Superior Court to restrain any conditions or practices in any workplace subject to Section 45 in which a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the danger could be eliminated through the enforcement process (Maine State Plan p. 6).

- f. Right of Entry; Advance Notice. A state program is required to have the right of entry to inspect workplaces and compulsory process to enforce such right equivalent to the federal program (Section 18(c)(3) of the OSH Act and 29 CFR 1956.10(e)). Likewise, a state is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the federal program (29 CFR 1956.10(f)).

Title 26, Chapter 6, Section 566 of the Maine Revised Statutes authorizes the Director of the Bureau, or his or her representatives, to perform any necessary inspections or investigations. The Bureau designates the Division of Workplace Safety and Health to carry out these provisions. Title 26, Chapter 3, Section 44 provides that the Director of the Bureau has the right to inspect and investigate during regular working hours. The inspectors have the right of entry without delay and at reasonable times. If the public employer refuses entry or hinders the inspection process in any way, the inspector has the right to terminate the inspection and initiate the compulsory legal process and/or obtain a warrant for entry. The inspector has the right to interview all parties and review records as they relate directly to the inspection.

Title 26, Chapter 3, Section 46 of the Maine Revised Statutes prohibits advance notice of inspections. Advance notice of any inspection, without permission of the Director of the Bureau, is subject to a penalty of not less than \$500 or more than \$1,000 or imprisonment for not more than 6 months, or both (Maine State Plan p. 6),

g. Citations, Sanctions, and Abatement. A State Plan is expected to have authority and procedures for promptly notifying employers and employees of violations, including proposed abatement requirements, identified during inspection; for the proposal of effective first-instance sanctions against employers found in violation of standards; and for prompt employer notification of any such sanctions. In lieu of monetary penalties as a sanction, a complex of enforcement tools and rights, including administrative orders and employees' right to contest, may be demonstrated to be as effective as monetary penalties in achieving compliance in public employment (29 CFR 1956.11(c)(2)(ix) and (x)).

Title 26, Chapter 3, Section 45 of the Maine Revised Statutes establishes the authority and general procedures for the Director of the Bureau to promptly notify public employers and employees of violations and abatement requirements, and to compel compliance. If a Bureau inspector believes that a violation of a safety and health standard exists, he or she will issue a written citation report with reasonable promptness. Section 45 provides that when an inspection of an establishment has been made, and the Director of the Bureau has issued a citation, the employer shall post such citation or a copy thereof at or near the location where the violation occurred. Each citation shall be in writing; describe with particularity the nature of the violation and include a reference to the provision of

the statute, standard, rule, regulation, or order alleged to have been violated; and fix a reasonable time for the abatement of the violation (Maine State Plan p. 7).

Title 26, Chapter 3, Section 46 of the Maine Revised Statutes contains authority for a system of monetary penalties. Monetary penalties are issued for serious citations. The Director of the Bureau has discretionary authority for civil penalties of up to \$1,000 per day the violation continues for repeat and willful violations. Serious and other-than-serious violations may be assessed a penalty of up to \$1,000 per violation, and failure-to-correct violations may be assessed a penalty of up to \$1,000 per day. In addition, criminal penalties can be issued to public employers who willfully violate any standard, rule or order. An alternative enforcement mechanism that includes administrative orders may be used in limited circumstances (Maine State Plan p. 8).

The state has given an assurance that it will revise its Field Operations Manual regarding inspections so that it, in conjunction with the provisions of the Maine Revised Statutes, is at least as effective as 29 CFR 1903 by January 2016 (Maine State Plan p. 13).

h. Contested Cases. A State Plan must have authority and procedures for employer contests of violations alleged by the state, penalties/sanctions, and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 2956.11(c)(2)(xi)).

Title 26, Chapter 6, Section 568 of the Maine Revised Statutes and Code of Maine Rules 12-179, Chapter 1 establish the authority and general procedures

for employer contests of violations alleged by the state, penalties/sanctions and abatement requirements. State and local government employers or their representatives who receive a citation, a proposed assessment of penalty, or a notification of failure to correct a violation may within 15 working days from receipt of the notice request in writing a hearing before the Board of Occupational Safety and Health on the citation, notice of penalty or abatement period. Any public employee or representative thereof may within 15 working days of the issuance of a citation file a request in writing for a hearing before the Board on whether the period of time fixed in the citation for abatement is unreasonable. Informal reviews can be held at the division management level prior to a formal contest (Maine State Plan p. 8).

The Director of the Bureau will remain responsible for the enforcement process, including the issuance of citations and penalties, and their defense, if contested. All interested parties are allowed to participate in the hearing and introduce evidence. The Board shall affirm, modify, or vacate the citation or proposed penalty or direct other appropriate relief. Any party adversely affected by a final order or determination by the Board has the right to appeal and obtain judicial review by the Superior Court (Maine State Plan p. 8).

Enforcement Conclusion. Accordingly, OSHA finds that the enforcement provisions of the Maine State Plan as described above meet or will meet the statutory and regulatory requirements for initial State Plan approval.

(6) Staffing and Resources

Section 18(c)(4) of the OSH Act requires State Plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1956.10(g), one factor

which OSHA must consider in reviewing a plan for initial approval is whether the state has or will have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the Plan.

The Maine State Plan provides assurances of a fully trained, adequate staff, including two safety officers and one health officer for enforcement inspections, and three safety consultants and one health consultant to provide consultation, training and education services in the public sector. The Plan provides assurances that within six months of plan approval the state will have a fully trained, adequate, and separate staff of compliance officers for enforcement inspections, and consultants to perform consultation services in the public sector. The compliance staffing requirements (or benchmarks) for State Plans covering both the private and public sectors are established based on the “fully effective” test established in AFL-CIO v. Marshall, 570 F.2d 1030 (DC Cir. 1978). This staffing test, and the complicated formula used to derive benchmarks for complete private/public sector Plans, are not intended, nor are they appropriate, for application to the staffing needs of State and Local Government Only Plans. However, the state has given satisfactory assurance in its Plan that it will meet the requirements of 29 CFR 1956.10 for an adequately trained and qualified staff sufficient for the enforcement of standards (Maine State Plan pp.11-12).

Section 18(c)(5) of the OSH Act requires that the State Plan devote adequate funds for the administration and enforcement of its standards (29 CFR 1956.10(h)). Maine has funded its state government safety and health program since 1972 solely utilizing state funds. The State Plan will be funded at \$800,000 (\$400,000 federal 50% share and \$400,000 state matching share) during federal Fiscal Year 2015.

Accordingly, OSHA finds that the Maine State Plan has provided for sufficient, qualified personnel and adequate funding for the various activities to be carried out under the Plan.

(7) Records and Reports

State Plans must assure that employers in the state submit reports to the Assistant Secretary in the same manner as if the Plan were not in effect (Section 18(c)(7) of the OSH Act). Under a State and Local Government Only State Plan, public employers must maintain records and make reports on occupational injuries and illnesses in a manner similar to that required of private sector employers under the OSH Act and 29 CFR 1956.10(i). The Plan must also provide assurances that the designated agency will make such reports to the Assistant Secretary in such form and containing such information as he or she may from time to time require (Section 18(c)(8) of the OSH Act and 29 CFR 1956.10(j)).

Maine has provided assurances in its State Plan that all jurisdictions covered by the State Plan will maintain valid records and make timely reports on occupational injuries and illnesses, as required for private sector employers under the OSH Act (Maine State Plan pp. 9-11). The records of occupational injuries and illnesses must be completed and maintained in accordance with the applicable provisions in Code of Maine Rules 12-179, Chapter 6 and Title 26, Chapter 3, Section 44 of the Maine Revised Statutes. Title 26, Chapter 1, Section 2 of the Maine Revised Statutes provides the reporting requirements. The state will provide a comparison of Code of Maine Rules 12-179, Chapter 6 to the recordkeeping regulations contained in 29 CFR 1904 by October 2015, and will amend Title 26, Chapter 1, Section 2 of the Maine Revised Statutes in 2015, to ensure equivalency with 29 CFR 1904 in accord with its developmental schedule (Maine State Plan p. 13).

Maine has also provided assurances in its State Plan that it will continue to participate in the Bureau of Labor Statistics's Annual Survey of Injuries and Illnesses in the state to provide detailed injury, illness, and fatality rates for the public sector. Maine will also provide reports to OSHA in the desired form and will join the OSHA Information System within 90 days of plan

approval, including the implementation of all hardware, software, and adaptations as necessary (Maine State Plan p. 11).

OSHA finds that the Maine State Plan has met the requirements of Section 18(c)(7) and (8) of the OSH Act on the employer and state reports to the Assistant Secretary.

(8) Voluntary Compliance Program

A State Plan must undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1956.11(c)(2)(xii)).

The Maine State Plan provides that the Bureau will continue to provide and conduct educational programs for public employees specifically designed to meet the regulatory requirements and needs of the public employer. The Plan also provides that consultations, including site visits, compliance assistance and training classes, are individualized for each work site and tailored to the public employer's concerns. In addition, public agencies are encouraged to develop and maintain their own safety and health programs as an adjunct to but not a substitute for the Bureau enforcement program (Maine State Plan p. 9).

The Bureau currently has a public sector on-site consultation program. Maine will provide an outline of procedures for this program to ensure equivalency with the regulations regarding consultation in 29 CFR 1908, or a timeline for their development by November 2016 (Maine State Plan p. 13).

OSHA finds that the Maine State Plan provides for the establishment and administration of an effective voluntary compliance program.

E. Decision

OSHA, after carefully reviewing the Maine State Plan for the development and enforcement of state standards applicable to state and local government employers and the record

developed during the above described proceedings, has determined that the requirements and criteria for initial approval of a developmental State Plan have been met. The Plan is hereby approved as a developmental State Plan for State and Local Government Only under Section 18 of the OSH Act.

In light of the pending reorganization of the State Plan regulations through the streamlining of 29 CFR 1952 and 29 CFR 1956, OSHA is deferring any change to those regulatory provisions relating to the Maine State Plan until the streamlining changes take effect. The change to the regulatory text will be accomplished through a separate Federal Register Notice.

The initial approval of a State Plan for State and Local Government Only in Maine is not a significant regulatory action as defined in Executive Order 12866.

F. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) that the initial approval of the Maine State Plan will not have a significant economic impact on a substantial number of small entities. By its own terms, the Plan will have no effect on private sector employment, but is limited to the state and its political subdivisions. Moreover, Title 26, Labor and Industry, of the Maine Revised Statutes was enacted in 1971. This legislation established the Board, whose purpose is to formulate rules that shall, at a minimum, conform with federal standards of occupational safety and health, so the state program could eventually be approved as a State and Local Government Only State Plan. Since 1971 the Maine program for public employers has been in operation under the Maine Department of Labor with state funding and all state and local government employers in the state have been subject to its terms. Compliance with state OSHA standards is required by state law; federal approval of a State Plan imposes regulatory requirements only on the agency responsible for administering the State Plan.

Accordingly, no new obligations would be placed on public sector employers as a result of federal approval of the Plan.

G. Federalism

Executive Order 13132, "Federalism," emphasizes consultation between federal agencies and the states and establishes specific review procedures the federal government must follow as it carries out policies that affect state or local governments. OSHA has consulted extensively with Maine throughout the development, submission and consideration of its proposed State Plan. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to initial approval decisions under the OSH Act, which have no effect outside the particular state receiving the approval, OSHA has reviewed today's Maine initial approval decision, and believes it is consistent with the principles and criteria set forth in the Executive Order.

H. Effective Date

OSHA's decision granting initial federal approval to the Maine State and Local Government Only State Plan is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Although the state has had a program in effect for many years, modification of the program will be required over the next three years by today's decision. Federal 50% matching funds have been explicitly provided in OSHA's FY 2015 final appropriation. Notice of proposed initial approval of the Plan was published in the Federal Register with request for comment. No comments were received, and OSHA believes that no party is adversely affected by initial approval of the Plan. OSHA therefore finds, pursuant to Section 553(d) of the Administrative Procedures Act, that good cause exists for making federal

approval of the Maine State and Local Government Only State Plan effective upon publication in today's Federal Register.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C., authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 1-2012 (77 FR 3912), and 29 CFR Parts 1902 and 1956.

Signed in Washington, DC, on July 28, 2015.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

BILLING CODE 4510-26-P

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